

REMARKS

This preliminary amendment is filed in response to the non-published Board of Patent Appeals and Interferences (BPAI) decision *Ex parte* Gary T. Ketchum (Appeal No. 2005-0015), which decision was mailed on December 10, 2004. This amendment is being submitted concurrently with a Request for Continued Examination (RCE) and a Petition to Reopen Prosecution Pursuant to 37 C.F.R. §1.198. Reconsideration of the application, as amended, is respectfully requested.

Claims 1-12 are pending.

Claims 1-4 have been amended to incorporate subject matter that the BPAI identified as distinguishing the present invention from the cited art.

Claims 5-12 have been added. New claims 5-6 and 8-12 contain the same or similar subject matter as claims 1-4. Support for new claim 7 may be found at page 7, lines 3-8 in the specification. No new matter is being introduced.

In its decision, the BPAI affirmed the final rejections of claims 1-4 under 35 U.S.C. §102(b) as being anticipated by U.S. Patent No. 5,862,804 issued on January 26, 1999 to Ketchum (hereinafter "Ketchum").

However, in its affirmation of these rejections, the BPAI noted that the Applicant's invention differs from the cited art in several respects. For instance, with regards to Applicant's independent claim 1, page 4 of the BPAI decision states, "We appreciate that appellant's disclosed invention differs from that of the Ketchum patent in that it util-

izes only one temperature sensor and substitutes circuitry which is independent of ambient temperature.”

In response, the Applicant has amended independent claim 1 to expressly incorporate the subject matter identified by the BPAI as being patentably distinct over the cited Ketchum patent. Namely, Applicant’s amended independent claim 1 now recites *said circuit generating said reference output independent of ambient temperature*, in accordance with the differences identified by the BPAI. Accordingly, the Applicant respectfully urges that independent claim 1, as amended, is allowable over the art of record.

In addition, Applicant’s claims 2, 3 and 5 depend on independent claim 1 and are therefore allowable for the same reasons. Claims 8-11 comprise the same or similar patentable subject matter as independent claim 1 and are thus also allowable for at least the same reasons.

With respect to Applicant’s independent claim 4, the BPAI similarly noted patentable differences between the claimed invention and Ketchum. Specifically, on pages 5-6 of its decision, the BPAI stated, “While the Ketchum patent does not disclose the use of a rate of change detector, claim 4 before us on appeal does not require a rate of change detector... Ketchum is not concerned with and does not measure the rate of temperature change.”

Applicants have amended independent claim 4 to recite *a circuit adapted to detect a rate of change in the signal output from said temperature sensitive detector sensor, said detected rate of change corresponding to a rate of change in temperature at said*

detector sensor. Because Ketchum does not teach or suggest a circuit adapted to detect a rate of change, as noted in the BPAI decision, the Applicant respectfully urges that amended independent claim 4 is allowable over the art of record.

Applicant's claims 6 and 7 depend on independent claim 4 and are therefore allowable for the same reasons. Claim 12 comprises the same or similar patentable subject matter as independent claim 4 and is thus also allowable for at least the same reasons.

All independent claims are believed to be in condition for allowance.

All dependent claims are believed to be dependent from allowable independent claims, and therefore in condition for allowance.

Favorable action is respectfully solicited.

Please charge any additional fee occasioned by this paper to our Deposit Account No. 03-1237.

Respectfully submitted,



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